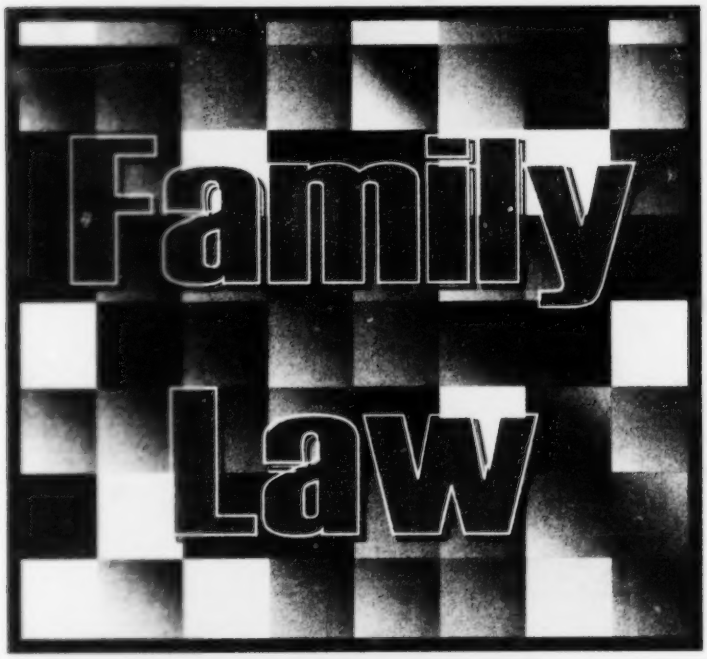
Ontario

What you should know about



IN ONTARIO

This booklet contains information about the law as it was at the time it was written. The law can change. Check the Ministry of the Attorney General website at *www.attorneygeneral.jus.gov.on.ca* for current information. This booklet does not contain legal advice or replace the specialized advice of lawyers or other experts.

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Introduction

This booklet is about family law in Ontario. It contains information about the laws that may affect you if you separate. These issues include the care and support of your children, support for you or your spouse and the division of your property.[1]

Before making important decisions, you should understand your rights and obligations. Family law can be complicated and a booklet cannot possibly answer all your questions or tell you everything you need to know. There are many ways you can inform yourself about the law and your options. Generally Ontario family law applies equally to couples who are of the same or opposite sex.

If you are separated or are thinking of separating, it is a good idea to speak to a lawyer about your situation. A lawyer can give you specific information about the law and tell you how it might affect you.

Your local family court can also be a good place to go for more information. Some courts offer parent information sessions on issues affecting separating families. All family courts have Family Law Information Centres that provides a range of information and services, including the following:

- pamphlets and other written materials on topics relevant to separating families;
- guides to procedure;
- referrals to services in the community, such as counselling;
- information about court procedure and court forms;
- information and advice about different ways of resolving

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[1]The information in this booklet with respect to division of property and taxation of support payments may not apply to you if you are an Indian registered under the federal *Indian Act*. Further information is available at the back of this booklet.

family law disputes including mediation, arbitration, collaborative family law and going to court; and

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- legal information and advice from legal aid lawyers knowledgeable about family law.

In Ontario, there are three different courts that deal with family law.

In some communities, family law matters are dealt with by the **Family Court of the Superior Court of Justice**. These courts can deal with all family law matters, including divorce, custody, access, division of property, adoption, and child protection. These courts also have Family Law Information Centres and offer family mediation services and parent information sessions to the public.

In other communities, family law matters are dealt with in two separate courts. You will need to know which one can deal with the family law issues you need to resolve:

- If you simply want to get a divorce, or if you want to get a divorce and ask for custody, access or support as part of the divorce, you must go to the **Superior Court of Justice**. You must also go to this court if you want to resolve matters related to the division of your family property.

- If you are not seeking a divorce, but only want to ask for support, or resolve issues related to custody of or access to your children, you could go to the Superior Court of Justice, but you can also go to the **Ontario Court of Justice**. This court also hears adoption and child protection matters

You and your spouse can also resolve the issues between you through private settlement, negotiation, mediation, arbitration or by going to court. This booklet provides some information about each of these options.

For more information about family courts and services as well as places you could call or write for help, please turn to the section on "Finding more information" at page 53.

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I. THINGS YOU SHOULD KNOW ABOUT FAMILY LAW

Getting married

In Ontario, a couple can get married in a civil ceremony or in a religious service.

When you get married, the law treats your marriage as an equal economic partnership. If your marriage ends, the value of the property you acquired while you were married and the increase in the value of property you brought into your marriage will be divided in half: one half for you and one half for your husband or wife. There are exceptions to this rule.

The law also provides that you and your husband or wife have an equal right to stay in the family home. If you separate, you will have to decide who will continue to live there.

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In addition, Ontario's family laws provide that you may be entitled to financial support for yourself and your children when your marriage ends.

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Couples who feel that the law does not suit the kind of relationship they have can make other arrangements in a **marriage contract**.

Marriage contracts are very important legal documents. You should think carefully about your decision. Speak to a lawyer and exchange financial information before signing a marriage contract.

In a marriage contract you can say what you expect from each other during your marriage. You can list property that you are bringing into the marriage and say how much it is worth and who owns it. You can say exactly how you will divide your property if your marriage ends. You do not have to divide your property equally. You can describe how support payments will be

made if your marriage ends. You can also make plans for the education and religious upbringing of your children, even if they are not yet born.

There are some things you cannot put in your marriage contract. You cannot make promises about custody and access arrangements for your children if your marriage breaks down. You cannot change the law that says each spouse has an equal right to live in their home.

Q ***We are already married and do not have a marriage contract. Now we think it might be a good idea to have one. Is it too late?***

A No, it's not too late. You can sign a marriage contract after you are married. Remember that it must be in writing and signed by you and your spouse in front of a witness who must also sign the contract. If you write your contract yourselves, each of you should have your own lawyer look it over before you sign it.

Q ***I am getting married in a few months. I don't own a lot but I do have the china set my mother got when she was married. It is worth about $2,000. When I marry, does the china set become my husband's too?***

A No. The china is your property. If your marriage ends, you can keep the china. But if the china has increased in value when your marriage ends, you and your spouse will share the increase in value.

If you have a marriage contract, it could say that the china is your property and that any increase in the value of the china during your marriage will not be shared with your spouse if your marriage ends.

Living together

If you live with someone without being married, people say you are in a common law relationship or are cohabiting.

Property

Common law couples do not have the same rights as married couples to share the property they bought when they were living together. Usually, furniture, household belongings and other property belong to the person who bought them. Common law couples also do not have the right to divide between them the increase in value of the property they brought with them to the relationship.

If you have contributed to property your spouse owns, you may have a right to part of it. Unless your spouse agrees to pay you back, you will have to go to court to prove your contribution.

Support

If your common law relationship ends, and you do not have enough money to support yourself, you can ask your spouse to pay support. You can ask for support for yourself if you have been living together for three years, or if you have lived together for less time and have had or adopted a child together. If your spouse says no, you can go to court and ask a judge to decide if you should get support.

If you and your spouse have or adopt a child together, you can ask for support for that child. Children of parents living in a common law relationship have the same rights to support from their parents as the children of married couples. If your spouse treated your child as their child while you lived together, you can also ask for support. If your spouse will not pay support, you can go to court and ask a judge to order your spouse to pay support for that child. The amount of support is set under the *Child Support Guidelines*.

As part of a support order for you or your child, you may also ask to stay in the home you shared when you lived together. The judge can order this even if you do not own the home, or if your name is not on the lease. This is different than for married couples. Married couples automatically have an equal right to stay in the home.

If you do not get support, you may not have the right to stay in the home if it is not yours.

Couples in a common law relationship can sign a cohabitation agreement to protect their rights.

A cohabitation agreement can spell out what you both want your financial and family arrangements to be. It can say who owns the things you buy while you are living together. It can say how much support will be paid if the relationship ends and how your property will be divided. It can say who has to move out of the home if the relationship ends.

It cannot say who will have custody of, or access to, your children if your relationship ends. You cannot decide this before the relationship is over.

Both of you must sign a cohabitation agreement in front of a witness for it to be legal. The witness must also sign the agreement. Once you have signed a cohabitation agreement, you must follow what it says. If one of you decides you don't like the agreement, you can negotiate a change to the agreement. Any change must also be in writing and signed in front of a witness. If you cannot agree, and you have now separated, you have to go to court and ask a judge to change it.

You should each speak to a different lawyer and exchange financial information before signing a cohabitation agreement.

Q ***We are living together and don't have a cohabitation agreement. What will happen to the things we own and our savings if one of us dies?***

A If you die without having a will which says exactly what you want to have happen to your property, your property will go to your blood relatives – for instance, your children, your parents or your brothers and sisters. To claim part of your property, your common law spouse will have to go to court to prove that he or she helped to pay for it. This takes time and is expensive. For these reasons, people living in a common law relationship should each have a will that says to whom they want their property to go if one of them dies.

Q ***When we moved in together, we went to lawyers and signed a cohabitation agreement. We've decided to get married. What happens to our cohabitation agreement?***

A When you get married, your cohabitation agreement becomes your marriage contract. If you both want to change it, you can sign a new agreement.

Separating and settling the issues between you

You are separated when you are not living together and there is no chance that you will live together again. When you separate, there are many decisions that have to be made.

You will need to arrange which one of you will stay in your home, who will pay family debts, how much support will be paid, how you will divide your property, and who will take care of your children.

You can resolve things in different ways.

1. You can have an informal arrangement, which can be verbal or in writing.

2. You can agree on things and write down your decisions in a separation agreement. A separation agreement must be signed by both of you in front of a witness for it to be legal. The witness must sign the agreement too.

3. You can use a mediator or an arbitrator.

4. You can use collaborative family law. (If you are interested in pursuing this option, you must contact a lawyer.)

5. You can go to court and ask the court to decide.

It is always better if the two of you can agree on how to settle the issues between you. Court proceedings can be very expensive and take a long time. If you and your spouse cannot come to an agreement, a mediator may be able to help you to talk to each other and reach an agreement. A lawyer can also help you to work things out, but remember that the same lawyer cannot help both of you.

Signing a separation agreement is a very important step. Your decisions now can affect you and your children for the rest of your lives. If one of you decides you don't like the agreement, you can try to negotiate a new agreement. If you cannot agree, you have to go to court and ask a judge to change it. A separation agreement is a contract that you must honour. You should speak to a lawyer to make sure you know all of the legal consequences of your decisions.

You have a right to complete and honest information about your spouse's financial affairs before you make any decisions. Do not sign anything until you are sure you have all the information you need. Make sure that you understand what is written down and that you agree to it.

The law leaves the decision about having a separation agreement to you. You may have a hard time proving that you and your spouse had promised to settle things a certain way if you do not have a written and signed separation agreement. This could be a problem if your spouse stops respecting your informal agreement.

It is up to you and your spouse to decide the best way to settle the issues between you. A lawyer, mediator or arbitrator may be able to help you decide what would be best for you.

Q ***I just found out that my wife did not tell me the truth about her income when we were working on our separation agreement. It turns out that she makes twice as much money as she said she did. Now that I know this, I think I am paying her too much support. What can I do?***

A This is one of the few situations in which you can go to court to ask a judge to change your separation agreement. Usually a judge will not change what a couple has agreed to in a separation agreement. However, a judge can change the agreement if he or she finds that a person was not honest and did not provide accurate information about income, property or debts when the agreement was made.

Common law couples

Q ***We have been living together without being married for 11 years and have one child. We have a house and a car we bought together and lots of furniture. We're not getting along and we are talking about splitting up. Can we write a separation agreement?***

A Yes. Common law couples can write and sign separation agreements in the same way married couples can. You can include whatever you both want in your agreement. It is important for each of you to see different lawyers before signing the agreement.

Seeing a mediator

Mediators are usually social workers, lawyers, psychologists, or other professionals. When these professionals work as family mediators, their job is to listen to what you want and to help you reach an agreement on support payments, the division of property, custody of and access to the children, or any other issues.

Mediators do not take sides or make decisions for you. They cannot give you legal advice.

You should each speak to your own lawyer before you see a mediator. You need to know the law and your rights and obligations first, before mediation starts. Your lawyer will usually not go to mediation with you.

Mediation is not appropriate for everyone, particularly in cases where there has been violence or abuse. If you are afraid of, or intimidated by, your spouse, mediation may not be a good idea.

If you feel confident that you can say what you want for yourself and your children and that you can defend your ideas, you may want to try mediation. It may give you a chance to settle things with the help of a third person.

If you feel unhappy with how mediation is working out, you can leave it at any time. A lawyer can negotiate for you instead. If an agreement cannot be reached, you can go to court and have a judge decide.

You should show any agreement you reach during mediation to a lawyer *before* you sign it.

Q ***If mediation doesn't work, can the mediator tell the court what was said during mediation?***

A It depends on whether you have chosen "open" or "closed" mediation. Before mediation starts you and your spouse will decide this issue. In open mediation, the mediator writes a full report on what happened during mediation and can include anything that he or she thinks is important, and that information is available to the court. In closed mediation, the mediator's report will only say what agreement you reached, or that you did not reach an agreement.

Q ***How can I find a mediator? How do I know if a mediator is good?***

A You can obtain the names of mediators through the Ontario Association for Family Mediation. Lawyers also often know the names of local mediators. In some communities, there are mediation services connected to the Family Court of the Superior Court of Justice. In those locations, on-site services are delivered free of charge to resolve narrow issues. Off-site mediation services are available to deal with more complex issues. Fees are charged according to your income for off-site services.

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At this time there is no professional licensing association for mediators. It is up to you to ask a mediator about his or her experience and training. If you are not satisfied, or do not feel comfortable, look for another mediator.

Q ***Is mediation expensive?***

A The cost of mediation varies. Some community groups offer mediation services for a fee geared to your income. Private mediators are in business for themselves and their fees can vary widely.

Seeing an arbitrator

Arbitrators are usually lawyers, child psychologists or former judges who act as neutral decision makers for people who cannot agree on the appropriate outcome for their situation. Unlike mediators, arbitrators have the power to make binding decisions for couples if they agree to the arbitration process. Except in certain circumstances, the arbitrator's decision is final and both parties must follow it.

Lawyers may refer people to an arbitrator because they have not been able to negotiate a solution to one or more problems. For example, you may have agreed that you will pay support to your spouse, but not how much or for how long. If you and your spouse agree, you can ask an arbitrator to make the decision for you.

The cost of an arbitrator is usually shared between you and the other person. You should each speak to your own lawyer before seeing an arbitrator.

Arbitration is becoming more common in family law cases and so there are new rules proposed for arbitrators who conduct these cases, and new procedures for making sure the arbitration is fair. You should check whether these new rules are in effect, since they had not yet become law when this booklet was published.

When the changes come into effect, arbitrators will have to make decisions under the laws of Canada in order for their decisions to be effective. You and your spouse will have to agree to arbitrate after the issues come up, not years in advance in a marriage contract or cohabitation agreement. As well, you and

your spouse will each have to get advice from your own lawyer before you can begin the arbitration process. New rules for arbitrators will make sure they have training, that they understand domestic violence, and that they keep records of their arbitrations.

Choosing a lawyer

If you are looking for a lawyer to help you resolve your family law issues, look for someone who has experience doing family law work. You might be able to get the name of a lawyer through a friend or relative. You can call the Lawyer Referral Service to get the name of a lawyer who will give you one half hour of advice for free. If your income is small, or if you are on social assistance, you might qualify for legal aid. Legal aid can help pay for some or all of your legal costs. The number for the Legal Aid Ontario office in your community is in the telephone directory. If you apply for legal aid, you will have to provide proof of your income, debts and assets. If you work, you may have to agree to pay back part or all of your lawyer's costs.

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Your lawyer can tell you about the law and can talk to you about services in the community that might be of help to you.

The conversations you have with your lawyer are confidential. Your lawyer cannot talk to others about what you have said without your permission.

If you are unhappy with the way your lawyer is handling your case, you have the right to say so. Talk it over with your lawyer. Your lawyer is working for you.

Q ***After seven years of marriage, we have decided to split up. We've talked about how we will divide our furniture and our household things. We don't have any children. Do we need to see a lawyer anyway?***

A Yes. You should each see a different lawyer. It may not seem necessary now, but it can save you problems later.

Your own lawyer can look out for your interests, tell you about things that you might not have thought of (like pension rights or taxes) and make sure that you understand what you are agreeing to.

Q ***My husband has a good job and makes a good salary. I have been at home for the last 10 years looking after our three kids. I have no money for a lawyer. What can I do?***

A You should call the legal aid office in your community. You may qualify for legal aid because you cannot afford to pay a lawyer. If you will get money or property from your spouse in the future, you may still be able to get legal aid now on the condition that you will pay legal aid back when you get the money from your spouse.

Q ***My spouse abused me. I know I should leave, but I have nowhere to go and can't afford to pay for a lawyer. How can I get legal advice***?

A If you have been abused, you have the right to emergency legal services through Legal Aid Ontario. You can talk to a lawyer for two hours for free. A women's shelter, a legal aid office or a community legal clinic can tell you how to get this free legal service.

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Going to court

If you and your spouse cannot agree on how to settle the issues between you, you can go to court and ask a judge to decide for you.

Sometimes you can agree on everything except one thing, like custody of the children or what should happen to the family home. You can go to court and ask the court to decide that one thing for you.

Many decisions about the children and about support may have to be made quickly. If you cannot agree on what to do right away, you can go to court to ask for a **temporary order**. This order can cover things like custody of, and access to, the children, who can stay in the family home, and how much support should be paid.

Unless the court orders otherwise, the temporary order will stay in effect until the court has time to hear your case in full. The court will then make a final decision.

In most cases, the court will schedule a **case conference** or a **settlement conference**. These conferences provide opportunities for you and your spouse and/or your lawyers, if you are represented, to meet with a judge to discuss the issues in your case. The judge may recommend that you see a mediator, if you have not already done so. Sometimes the judge will give his or her opinion on what a judge hearing your case at a trial would likely decide. The judge's opinion will not decide the issues in your case. However, it may help you to come to an agreement with your spouse. Even if you do not agree on everything, you may be able to agree on some issues.

Q ***We cannot agree on who should have custody of our children. When we go to court, will the children have to go too?***

A The judge will want information about the needs of the children and their relationship with each of you. Judges generally want to avoid having children give evidence in

these cases. More likely, the judge will ask for an **assessment.**

An assessment is a detailed review of your family situation by a person such as a social worker, psychologist or psychiatrist. The person doing the assessment will usually meet with each member of the family and sometimes with other people. He or she will then write a report for the court, which contains recommendations on the issues of custody and/or access. In most cases, you and your spouse will be responsible for the costs of the assessment.

In some cases the judge may ask the **Children's Lawyer** to conduct an investigation and report back to the court with recommendations. The Children's Lawyer may assign a clinical investigator to conduct the investigation. The clinical investigator will meet with the children, the parents and other people.

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If the court feels that the children would benefit from having their own lawyer during the court process, the court can ask the Children's Lawyer to provide a lawyer to represent your children's interests in court.

Q ***Do I need a lawyer to go to court?***

A No. You can go to court without a lawyer. You will then be responsible for completing and filing all of the appropriate court documents. You can get some information about completing these forms at the court Family Law Information Centre. You can also ask court staff if there are any guides to procedure that can help you. You will also speak for yourself in front of the judge.

Some courts have lawyers who are called duty counsel. Legal aid provides these lawyers at no cost to people who have low incomes. Their job is to answer people's questions and to help the court. They may be able to give you some information about the law. In some cases, duty counsel can also speak to the court on your behalf and help you negotiate a settlement.

Getting a divorce

Separation agreements and court orders resolve family matters when you separate but they do not legally end your marriage. The only way to do this is to get a divorce. Only a court can give you a divorce.

You can get a divorce by proving that your marriage is over. You can prove this by showing that you have been separated for a year, or that your husband or wife has had a sexual relationship with another person, or that your husband or wife has been physically or mentally cruel to you.

If you cannot agree on the terms of your divorce, you can go to court and let the court decide. If you can agree, you can file your agreement in court. In that case, you probably will not have to see a judge. When your divorce is final, you can marry again.

Q ***We've been living apart for five years and are happy with the way our separation agreement is working out. I would like to get a divorce now. Can I do the paperwork myself?***

A Yes. However, it is a good idea to speak to a lawyer first to make sure that you understand all the consequences of getting a divorce. Your lawyer can advise you on support, tax, pension and other issues.

II. YOUR LEGAL RIGHTS AND OBLIGATIONS

Staying in the family home

The family home is a special place. It is where you live and where your children feel most comfortable. If you own your home, it may be the most expensive and valuable thing you own.

If you are married, both of you have an equal right to stay in your home unless a judge decides that one of you must move out.

Since both of you have a right to stay in your home, neither of you can sublet it, rent it, sell it or mortgage it without the other's permission. This is true even if your lease is in only one of your names or if only one of you owns the home.

When you separate, both of you may want to stay in the family home. If you cannot agree on who should stay in the family home, you can use lawyers, a mediator or an arbitrator to help you decide, or you may have to go to court to have the court decide who can stay in it.

It may be that, after the separation, neither of you will be able to afford to stay in your home.

If you have children, the person who has custody of the children will most often be the one who stays in the family home with the children. This helps children adjust to their new family situation in a place and neighbourhood that they already know.

Common law couples

Q ***Before we lived together, I owned a house. The house is still in my name and I still pay the mortgage. Marie pays for repairs and upkeep. If we split up, does she have a right to stay in the house?***

A Maybe. If a judge orders you to pay support to Marie or for your children, the judge can also decide that Marie can stay in the house It doesn't matter who owns the house. Marie can also ask you to pay her back for the money she spent on repairs or upkeep to the house. Remember, if you and Marie marry, your rights change.

Caring for your children

Parents are responsible for their children. When a family is living together, both parents share the responsibility for their children's upbringing, education and everyday lives. This applies whether the parents are married or not.

When you separate, you have to arrange for the care of your children. They need a place to live, food and clothing. Most important, they need to feel loved and supported even though their parents are not living together.

The best thing you can do is to work out together how you are going to care for the children after you separate.

If you can work things out together, you can write out your arrangements in a parenting plan. A parenting plan can include when each parent spends time with the children and who makes major decisions about them. A parenting plan can be an informal arrangement between the two of you, or it can be part of your separation agreement or court order. If the arrangements are informal, they can be difficult to enforce.

If you cannot agree on who should have custody of the children, you can go to court to have a judge decide. The judge may ask for an assessment by a clinical investigator, social worker, psychologist or psychiatrist. The person will speak to each of you, to the children and sometimes to others. He or she will write a report for the court, recommending where the children

should live and when they should see the parent who does not have custody.

The judge must think only about the children's best interests when making a decision about custody. Let the judge know if your spouse has ever been violent or abusive to you or any children, because the law requires that the judge consider this issue. The judge will look at all information heard in court and will consider where the children are living right now. If they have been living with only one parent for a while and things are going well, the judge may not want to change that.

Custody: If your separation agreement or a court order gives you custody of your children, the children will live with you. You have the right to make decisions about their care, their education, their religious instruction and their welfare — unless the agreement or court order says otherwise.

Joint Custody: Parents who have joint custody of their children share the right to make decisions about their care. The children may spend half the time with one parent and half the time with the other or they may spend more time living with one parent than with the other. Both parents remain involved in making decisions about the children. For joint custody to work, parents have to be able to communicate with each other and to co-operate even though they are not living together.

Access: If you do not have custody of your children, you have a right to spend time with them unless the court decides that this is not in their best interests. Access arrangements can be written out in detail in a parenting plan, separation agreement or court order. The plan, agreement or order could say, for example, that the children would be with you every other weekend.

Or, your access arrangements could be open, letting you work out arrangements with the other parent in a more flexible way. It is difficult to enforce this kind of access arrangement.

You also have the right to receive information about your children's health, education and general situation. You do not have a right to be part of the decision-making about these things,

unless you have joint custody of your children or your separation agreement or court order says that you will share in making decisions.

A court may refuse you access to your children if there is a fear that you will harm them or harm the parent with custody, or if there is a fear that you will not return the children to the parent with custody.

Supervised Access: Where there are concerns for the safety of the children, and/or a parent, the parents can agree, or the court can require, that access visits with children be supervised. This means that someone else must be present when you visit with your children. Sometimes the parents can agree on a friend or relative who can supervise visits. Parents can also pay a professional, such as a social worker, to supervise visits. In many communities across Ontario, there are government funded Supervised Access Centres staffed by trained professionals and volunteers. On arrangement with Supervised Access Centre staff, families can attend the centre for supervised visits or for supervised drop off and/or pickup of the children for access visits.

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Enforcing custody and access orders

If a court order for custody or access is not being obeyed, you can ask the court to enforce the order. The court can try to get parents to respect the custody and access arrangements made for their children. The court may ask both parents to come to court to explain what is happening. If the court is satisfied that access is not occurring without a good reason, the court can fine the custodial parent or even send them to jail. If there are serious problems with custody and access arrangements, the court can change the arrangements.

You can also ask the court to enforce custody and access arrangements that are made in a separation agreement.

Q ***Our separation agreement says that my wife has custody of our children and I have access. I don't think my wife is taking good care of the children. I think the kids would be better off living with me. Can our separation agreement be changed?***

A Maybe. You can try to reach a new custody agreement with your spouse. If that is not possible, you can go to court to ask the court to give you custody of your children. The court can change the custody and access arrangements in a separation agreement if it thinks it would be in the children's best interest to make a change.

Q ***When my spouse and I split up last year, I stayed in the apartment. The children are with me and see their other parent once in a while. Do I have legal custody of my children?***

A Right now, you have what is called de facto custody. This means that, in fact, you have custody of your children and have been making decisions about their care and upbringing as if you had legal custody. Your spouse has accepted this arrangement. It is very unlikely that a court would make changes to your situation.

However, it will be more difficult for you to enforce your custody rights if you do not have them clearly set out in a court order or agreement, especially if you and your spouse disagree on what the custody arrangements have been.

You will have legal custody when you and your spouse sign a separation agreement that says that you have custody or when a court says that you do.

Q ***After a lot of arguments and a lot of time in court, I got a court order for custody of our children. Their father has access. His family lives outside of Canada. I am afraid he may take the children and go to his family's home and I will never see them again. What can I do?***

A If your spouse takes the children away from you, he is committing a serious crime. The police can arrest him and charge him with child abduction. You can do things now that will make it harder for him to leave Canada with the children. There are also international laws to help get children back from many countries. Speak to a lawyer.

If you think the children are about to be taken out of the country, call the police right away.

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Financially supporting your children

Both parents have a responsibility to financially support their children. They share this responsibility when they are living together and continue to share it after they separate. This responsibility applies to all parents, regardless of whether they were married, living together or have never lived together.

The parent with custody of the children has to take care of them, buy food and clothes for them, pay for outings and activities, look after all their day-to-day needs and keep the home running.

The parent who does not have custody of the children usually has to pay the parent with custody money to help cover the costs of taking care of the children. This payment is called child support.

The amount of child support to be paid in Ontario is set out under the *Child Support Guidelines*. Under the *Guidelines*, child support payments are based on the income of the person who does not have custody or the person with whom the children do not habitually reside and the number of children that need support.

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In some cases, the court can order an amount that is higher or lower than the guideline amount.

- For example, the court can award more than the guideline amount where the child has "special expenses." These might include, for example, childcare expenses, tuition for private school, fees and equipment for hockey, or the cost of getting braces.

- In very limited circumstances, the court can also award less than the guideline amount where paying this amount would cause "undue hardship" for the parent

required to pay. In order for the court to consider awarding less than the guideline amount, the parent asking for the decrease would have to prove hardship and prove that the standard of living in his or her household is lower than the standard of living in the child's household.

Q ***How do I know if the Child Support Guidelines apply to me?***

A The *Guidelines* apply to all child support orders made or changed after December 1, 1997.

Q ***I think that my spouse is earning more money now than when the child support order was made. How can I find out?***

A Under the *Child Support Guidelines*, the person entitled to child support can ask the person paying support for information about his or her income once a year. The request must be in writing. The person paying support must provide financial information including:

- a copy of his or her three most recent income tax returns and notices of assessment and reassessment for those returns;

- information regarding how that person is currently making a living. For example, if the person is an employee, he or she must give recent pay-stubs; if he or she is self-employed, he or she must give financial statements of the business, and a statement showing all money paid to people or companies related to the person paying support. There are other requirements for someone who owns an incorporated company or who is a partner in a partnership;

- a statement of any income from a trust and copies of the trust's financial statements; and

- current information in writing about any "special expenses" or "undue hardship".

Q ***Does my child support automatically change when my spouse's income changes?***

A No. If your spouse's income changes, the two of you may be able to agree on a new amount of support. However, if you can't agree, you will need to return to court to have the new amount set. This amount will be determined under the *Guidelines* based on your spouse's new income.

Q ***I have an order for child support that was made in 1993. One of my friends told me that the tax laws that affect child support payments have changed. Do these changes affect me?***

A No. The new law only affects orders that were made after the law changed on May 1, 1997. The law now says that child support is not a tax deduction for the person paying support, and that the person receiving child support does not have to pay tax on the support payments.

If you and the other parent would like the new tax rules to apply to your existing child support amount, you can both send a form to the Canada Revenue Agency indicating that you want the new tax rules to apply to you.

If you go back to court to change your old order, the new tax rules will automatically apply to your new order.

Q ***My child support order was made under the Guidelines and does not say anything about matching payments to the cost of living. Inflation could mean that my support money isn't worth as much in a couple of years. Can I change this?***

A The *Child Support Guidelines* do not adjust support payments for increases in the cost of living. Payments are based on the income of the parent who pays support. If that parent's income goes up, you can ask for an increase in your child support payments.

Q ***One of my friends told me that the Child Support Guidelines were updated and that this may affect the amount of support I am entitled to receive. Do these changes automatically affect me?***

A No. The updated *Child Support Guidelines* only affect orders that were made after the new *Guidelines* came into force. If the new amendments apply to your case, you and the other parent may be able to agree on a new amount of support. However, if you cannot agree, you can return to court to change your old order. The court will apply the applicable *Child Support Guidelines* amount to your new order.

Q ***I have been paying child support fairly regularly and now my wife is starting to play games about when I can see my kids. Last weekend I went to pick them up and she said they'd gone to their grandmother's for the day. Why should I pay support if I don't get to see my children?***

A The law is very clear. You owe child support no matter what happens with your access arrangements. Child support is money you pay to help share the cost of taking care of your children. But you do have a right to have your access arrangements respected. Speak to your lawyer, a mediator, or a family counsellor about the trouble you are having getting to see your children. Everyone will benefit if you can work things out with your spouse without having to go to court.

Common law couples

Q ***Martine and I are not married. We have lived together for eight years and have twins who are four years old. Martine is tired and fed up and wants to move out on her own. We have agreed that I will have custody of the twins. Will Martine have to pay child support?***

A Yes. The amount of support will be set under the *Child Support Guidelines*. The amount will be based on Martine's

income. Children have a right to financial support from both their parents, whether or not their parents are married. Common law couples have the same responsibilities to their children as married couples do.

Parents who have never lived together

Q ***A while ago I had a short relationship with Joan. We never lived together. We just dated a few times. We broke up when I found out she was dating someone else at the same time as me. She just had a baby boy, and she says it's mine and she's taking me to court for child support. I don't think I'm the father, and even if I am, I don't see why I should have to support the child.***

A If the child is yours, you have a legal obligation to support the child, even though you and Joan were never married or living together. You would also have a right to access to your child so that you could spend time with him. However, if you believe he is not your child you can request a paternity test. If Joan won't agree to one, you can ask the court to order the paternity test.

Step-parents

Q ***I was a single mother, looking after my three-year-old son, when I married Jason five years ago. We all got along great until a few months ago. Now I think we're headed for a separation. If we do split, does Jason have to pay any child support for my son?***

A If Jason accepted the responsibilities of being a parent to your son, you have a right to ask him to pay child support, even though he is not your son's biological father. A judge could decide if Jason had, in fact, treated your son as his own and had accepted the responsibilities of being a parent. If so, the judge would then look at Jason's income and set the support according to the *Child Support Guidelines*.

Financially supporting your spouse

The law views spousal relationships as economic partnerships and when the partnership breaks down the person with more money may have to support the other. At the same time, the law expects adults to try to be self-sufficient and to look after their own needs to the best of their abilities.

During a marriage, one person often spends more time looking after the home and the children. That person does not have a chance to earn a lot of money in the workforce, or to become more skilled and more highly paid in a trade or profession, or to pay into a pension plan over a long period of time. When a marriage ends, that person is at an economic disadvantage.

To decide on the amount of support that should be paid by one spouse to the other, the law says that judges must look at how much the person asking for support needs to live, and how much the other person can pay. A person may claim support to help him or her become financially self-sufficient or to keep from ending up in serious financial difficulty.

In general, people who have been married for a short time will only be able to get support on a short-term basis. Support payments may give a person a chance to go back to school or train for a job.

After years out of the workforce or years in low-paying jobs, some people may never be able to become financially self-sufficient. Their spouses may have to pay long-term support for them.

Here are some of the things that are taken into account:

- the age and health of the couple;
- available employment opportunities;
- the effect being married had on employment opportunities;

- the contribution made to family care during the marriage;
- the contribution made to the other person's career;
- the family's standard of living before separation;
- the time it will take for the person to become self-sufficient; and
- the need to stay at home to take care of young children or adult children with a disability.

You can agree on the amount of support that will be paid and for how long it will be paid and include this in your separation agreement. If you cannot agree, you can go to court and let the court decide.

Recently some lawyers and judges have started testing draft spousal support advisory guidelines. These guidelines provide a range of support amounts based on the age of the spouse receiving support, the length of the marriage and the presence or absence of child support. These guidelines are designed to assist you in reaching agreement about a support amount based on the amounts awarded by judges in similar cases. The spousal support advisory guidelines are still being developed.

Q ***How can I figure out how much support to ask for?***

A You need to write down details of your income and expenses. List how much you spend on food and household expenses and things like transportation, medication, dental bills, clothes, dry cleaning, haircuts, car expenses and insurance, home insurance, vacations, gifts, entertainment, pet food and veterinary bills. All these expenses can be included when figuring out how much support you need. You can also ask your lawyer to explain how the spousal support advisory guidelines might apply to your situation.

Q ***I am 55 years old. The court ordered my spouse to pay me $500 every month. That is fine for now, but with inflation and the price of everything going up, I am worried that it won't be enough in five years. Is there anything I can do?***

A Yes. You can ask the court to add a cost of living adjustment to your court order. This ties your support payments to the Consumer Price Index for the area where you live. Your support payments will then change every year to match the rate of inflation.

Common law couples

Q ***We've lived together for ten years. Most of that time, I've been at home taking care of our four kids. If we separate, can I get support for myself?***

A You can ask for support. Common law spouses have a right to ask for support for themselves if they have lived together for more than three years or if they have lived together for less than three years but have had or adopted a child together.

Enforcing your support payments

All support orders made in Ontario are automatically filed with the Family Responsibility Office (FRO). FRO processes child and spousal support payments to help ensure that the support gets paid on a regular basis and takes action to enforce support orders that are not being paid on time or in full.

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Automatic support deduction

When a court orders a person to make regular support payments, the court also makes a support deduction order. The court sends the support deduction order to FRO and FRO writes to

the person's employer (or other income source) telling the employer to deduct the amount of the support from the person's regular pay cheque. The employer must then send the money to FRO. FRO, in turn, sends the money to the person entitled to the support under the court order.

If your support arrangements are set out in a domestic contract (marriage contract, separation agreement, or cohabitation agreement) or a paternity agreement, rather than a court order, you can still have your support payments processed through FRO. To do so, you must file your domestic contract or agreement with the court according to the procedure in the *Family Law Act* and the rules of court. Once the domestic contract or agreement is filed with the court, it can then be filed with FRO and FRO can collect your support payments for you.

Withdrawing from FRO

Some people do not want their support payments processed through FRO. If both the payor (the person who owes the support) and the recipient (the person who is supposed to receive the support agree, they can withdraw from FRO. They can do so by sending a Notice of Withdrawal form, signed by both of them, telling FRO that they would like to withdraw their support order, domestic contract or agreement.

FRO will close the case once it receives this notice. However, if the recipient is receiving social assistance and the support order is assigned to the social assistance agency, the agency providing the social assistance must also agree to withdraw the support order from FRO. You should confirm if any social service agency is involved and whether their consent is also required. You can do this by completing and sending a Confirmation of Assignment form to the social service agency. The agency will advise if they are involved.

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If the payor is not in compliance with the support order, and owes support monies, the recipient can decide to withdraw the support order from FRO without the agreement of the payor and enforce the support order directly. The recipient can do this by sending a signed Notice by Support Recipient of Unilateral Withdrawal form to FRO.

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Once FRO receives this notice it will close the case and the recipient can enforce the support order. If the recipient is receiving social assistance and the support order is assigned to the social assistance agency, the agency providing the social assistance must also agree to withdraw the support order from FRO.

There is a fee charged to both the payor and the recipient if the support order is re-filed with FRO at a later date.

Enforcement of support payments that are not being made on time or in full

If your support order is not filed with FRO, and the support payments that are owed to you are not being paid on time or in full, you can take legal action on your own behalf to recover the money you are owed. You can:

- request a default hearing, at which the payor must explain to a judge why the support is not being paid. If the judge is not satisfied with the explanation, the judge can order that support be paid. In extreme circumstances, the judge can send the payor to jail for failing to pay support;
- garnishee the payor's wages and bring the payor's employer to court if the employer disobeys or ignores the notice of garnishment;
- garnishee the payor's bank account;
- seize the payor's RRSP;
- register the support order as a charge on the payor's house, other real estate or personal property; or
- file a writ against the payor's property.

Bringing these legal actions may be time-consuming and expensive and you may need a lawyer to assist you. However, you do not have to enforce your support payments yourself. FRO can act on your behalf to recover the money that is owed to you. FRO

can take all of the steps outlined above to collect your support payments. In addition, FRO can:

- request records containing information about the payor's employment and financial circumstances and address from any person or public body;
- bring the payor's employer to court for disobeying or ignoring a support deduction order;
- deduct money owed to the payor by the federal government (including income tax refunds and Employment Insurance benefits);
- report the amount of support owed by the payor to a credit bureau;
- intercept the payor's lottery winnings, if the prize is over $1,000 and the lottery was in Ontario;
- suspend the payor's driver's licence; or
- suspend the payor's federal licences or privileges, such as a pilot's licence or a Canadian passport.

If you have withdrawn from FRO, you can re-file your support order, domestic contract or agreement if you have problems with your support payments later and decide that you want FRO's assistance.

You should be aware that FRO does its job best when you keep the office up to date. Always make sure that FRO knows your most current address and telephone number, and if you find out that the payor has moved or has changed jobs, you should let FRO know, in case the payor has not notified the office.

In order for FRO to enforce your support payments effectively, it is also important that your support order, domestic contract or agreement be clearly written. For more information on this, you may find it helpful to refer to the FRO website at www.theFRO.ca.

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Dividing your property

The law says that married spouses share responsibility for childcare, household management and earning income during their marriage. In the eyes of the law, a marriage is an equal partnership. When a marriage ends, the partnership is over and property has to be divided.

To recognize the equal contribution of each person, the general rule is that the value of any property that you acquired during your marriage and that you still have when you separate must be divided equally, 50-50. Property that you brought with you into your marriage is yours to keep if your marriage ends. Any increase in the value of this property during your marriage must be shared.

There are some exceptions to these rules. The law allows you to keep some property that you have at the end of your marriage for yourself. This property is called **excluded property**. It includes:

- gifts you received during your marriage from someone other than your spouse;
- property that you inherited during your marriage;
- money that you received from an insurance company because someone died; and
- money that you got or that you have a right to get as a result of a personal injury, like a car accident.

The family home is another exception to the general rules. The law says that when your marriage ends, the full value of the family home must be shared even if one of you owned the home before you were married, received it as a gift or inherited it.

Unlike other types of property, you do not get to keep for yourself what the house was worth at the time of your marriage.

You and your spouse can agree to a different split. Or, in some circumstances, you can ask the court to divide things differently. The court can only divide property differently in very special situations and if a 50-50 split would be extremely unfair to one of you.

The legal rules that you have to follow to calculate the value of your property and divide it between you and your spouse can be complicated. It is a good idea to consult a lawyer about how the rules apply in your case.

The next section will give you an idea of how these rules work. Remember that this is only a description of the general rules. There may be other rules and exceptions that would apply to the facts in your case.

The first thing that you and your spouse must do is to separately calculate the total value of your share of the family property according to the rules set out in the law. You must be fair and honest when you do this. If you go to court, you must prepare a full financial report of all your property, debts and income. You must swear that it is accurate.

You can calculate your share of the family property using Steps 1-4 set out below:

Step 1: Find out the value of the property you had on the day you separated

- Your property is anything that is in your name or that belongs to you.
- You must list all your property, including property in other parts of the country and the world. For example, your list of property

might include your home, a business, a car, furniture, a sound system, clothes, sports equipment, jewellery, savings in bank accounts and retirement savings plans, and your right to a pension, even if you will only get the pension years from now.

- If you own some property together in both names, you each put half the value of the property on your list.

Step 2: Subtract the value of the debts you owed on the day that you separated

- Money owing on credit cards, the amount left to pay on your house and a car loan are all examples of debts.
- List them at their value on the day of separation.

Step 3: Subtract the value of property that the law allows you to keep for yourself

- This property includes gifts and inheritances received from someone other than your spouse during your marriage, money received from an insurance company because someone died, and money you got or have a right to get as a result of a personal injury.

Step 4: Subtract the value of property that you brought into your marriage less the value of debts

- Add up the value of all the property that you owned when you married.
- Do not include your family home, even if you owned it on the date of your marriage.
- Subtract all the debts you had when you married.

Summary of steps 1-4:						
Value of property at separation	*minus*	Value of debts at separation	*minus*	Excluded property	*minus*	Value of property at marriage less debts
(Step 1)		(Step 2)		(Step 3)		(Step 4)
= your share of the value of the family property						

The final step will tell you if one of you owes the other any money.

Step 5: Find out if a payment is owing

- Compare the value of your share of the family property to the value of your spouse's share.
- Subtract the smaller amount from the larger amount.
- Divide the difference by 2. This is the amount that the spouse with the larger share must pay to the spouse with the smaller share.
- This payment is called an equalizing payment.

Note: If a person has more debts than property, the value of his or her share of the family property is zero.

For instance, if you owed the bank $15,000 when you separated, and you have only $8,000 worth of property, the value of your family property is $0 for the purposes of calculating an equalizing payment.

Example: George and Maria

George		Maria
$47,000	Step 1: Find out the value of the property you had on the day you separated	$12,000
-8,000	Step 2: Subtract the value of the debts you owed on the day you separated	-2,000
-4,000	Step 3: Subtract the value of the property that the law allows you to keep for yourself	
-18,000	Step 4: Subtract the value of your property at the time of marriage less the value of debts	-8,000
$17,000	**Total value of family property**	**$2,000**

Step 5: Find out if a payment is owing

$17,000 (larger amount) - $2,000 (smaller amount) = $15,000

$15,000 ÷ 2 = $7,500

George must make an equalizing payment of $7,500 to Maria so that they are each left with the same amount, $9,500.

Q ***Our calculations say I am entitled to a payment of $5,000. Do I get this in cash?***

A Not necessarily. The payment can be paid in cash. It can also be made by giving you property worth $5,000. Or, an amount could be put towards your rent or mortgage every month until $5,000 is spent. How the payment will be made is one of the things that you can arrange in your separation agreement. Or, it is one of the things the court can decide.

Q ***We each went to a lawyer and got some information and advice about how the law says our family property should be divided. Now we've come to our own agreement about things. Can our separation agreement divide things differently from the way the law says?***

A Yes. You are free to divide your property any way you want in your separation agreement. You should each have your own lawyer look over your separation agreement before you sign it. You cannot easily change your separation agreement later.

Q ***I received a car as a gift from my father. I know that the law says that if we separate, I don't have to share the value of gifts I received during our marriage. I have decided to sell the car. Once I sell the car, is the money I get for it part of the property I must share with my spouse if we decide to separate?***

A Not necessarily. If you keep the money separate, for example, in a savings bond, so that you can always trace it to the sale of the car, it will be excluded from the property you must share at the end of your marriage.

There is an important exception to this general rule that affects the family home. If you use the money from the sale of the car to pay down the mortgage on your family home or to renovate it, you must share the full value of the family home with your spouse if you separate. Once money is put into the family home it must be shared, even if the money came from a gift or an inheritance or other property that the law says you do not have to share with your spouse.

Q ***It's my wife's fault our marriage is over. She started seeing someone else and has decided that she wants out of the marriage. Why should I have to share the value of my property with her now just so this new guy gets it?***

A Your spouse's new relationship has no effect on the division of property at the end of your marriage. The law on dividing family property has nothing to do with why your marriage has ended. The law sees a marriage as an equal partnership. When it is over, the financial benefits of the partnership have to be divided evenly and fairly. The calculations are made without looking at who is at fault or who is to blame.

Q ***My husband has been paying into company pension plans for 32 years. I stayed home to look after the kids and now I am doing odd jobs for a little extra money. If we separate, do I have a right to share his pension?***

A Yes. In most cases, a professional financial consultant or actuary will have to look at your spouse's pension plan to establish its value. This amount is added to your spouse's share of the family property. Or, you and your spouse can agree that when he starts receiving his pension, you will get a certain percentage of it. You should see a lawyer to make sure the paperwork is done properly.

Important: As soon as you separate, you are no longer recognized as a spouse under pension law. For example, if your spouse dies after you separate, but before you reach any agreement, you do not have a right to a survivor's benefit. You should make sure that your agreement or court order is clear about your rights to his pension.

Q ***Last summer, my brother and I built an addition to my house. The addition cost $10,000 and added $20,000 to the value of the house. Now my wife and I are splitting up. Can I get the $20,000 back?***

A No. You have to share the full value of your family home with your spouse. It doesn't matter if you put more money or work into your home. There are some very limited exceptions to this rule.

Q ***My parents left me their house when they died. I have been living in it for the last two years with my boyfriend. We are planning to get married and raise a family here. If our marriage doesn't work out, I don't want to lose the house to him. In our marriage contract, can we say that the house is mine no matter what happens?***

A Yes. Your marriage contract can say that you own the house and that its value when you married, and any increase in its value during your marriage, will be yours. But, your spouse will have the same right as you have to stay in the family home if your marriage breaks down. You cannot put anything in your marriage contract to change this.

If your marriage ends, your spouse may be able to stay in the house until you can agree to, or the court decides on, other arrangements.

Q ***We live on a big dairy farm. Is the whole farm considered to be our family home?***

A No. Your family home is only the part of the farm where you live, the house and the small area around it. The rest of the farm is property like any other property. It is not covered by the special rules for family homes.

Q ***I'm so upset by everything, I cannot cope with making lists of property right now. Do I have to do this right away?***

A You have six years from the day you separated to go to court to ask for a decision on the amount of the equalizing payment. If you get a divorce, you may have less time. You would have six years from the day you separated, or two years from the date your divorce is final, to go to court, whichever date comes first.

Q ***I am worried that now that I've moved out, all our family property will disappear before we have a chance to resolve things. I think my husband might get rid of it just to keep me from sharing in its value. Is there anything I can do?***

A Yes. You can go to court and ask the court to stop your spouse from giving away the property. The court may tell him not to sell or dispose of the property or it can order that it be put in someone else's care to protect it.

Common law couples

Q ***We are not married but we've been living together for 15 years. If we split up, do we have to share the value of our property?***

A Maybe. Only married couples have an automatic legal right to half the value of family property. You can ask your spouse to pay you back for your contribution to property that your spouse owns. If your spouse does not agree, you can go to court to make your claim. But the claim will be based on another area of law, not family law. Ask a lawyer for advice.

Dividing property after the death of your husband or wife

The law on dividing your family property on separation can be used to divide your family property after your husband or wife dies. There may be benefits to doing this.

You have six months from the time of your husband's or wife's death to file a document with the court stating that you wish to use these laws to divide your family property. You should see a lawyer before making a decision.

If there is a will

If your husband or wife dies leaving a will saying how his or her property is to be divided, you have a choice. You can take the property left to you in the will or you can divide your family property using the same rules that apply in the case of separation.

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Using these rules may be to your financial advantage if your husband or wife left most of his or her property to other members of your family or to other people.

You will have to make a list of all your property in the same way that you would if you separated. You must value your property according to what it was worth the day before your husband or wife died.

If there is no will

If your husband or wife dies without a will, there is a special law, the *Succession Law Reform Act*, which says how property is to be divided among the surviving family.

You can accept the property division according to that law, or you can divide the property using the rules that apply on separation.

Your right to stay in the family home

If your husband or wife owned your family home and left it to someone else, that person cannot claim your home the day after your husband or wife dies. You have a right to stay in your family home for 60 days. You will not have to pay rent during this time.

Continuing support payments after the payor dies

Your domestic contract or agreement can say that your former spouse's estate must continue to make your support payments after his or her death.

Support arrangements made before March 1, 1986 or under the *Divorce Act* must be paid by a person's estate only if the domestic contract, agreement or the order says they must continue after the payor's death.

If you have been receiving support payments under a court order made under the *Family Law Act* (on or after March 1, 1986), your former spouse's estate must continue to make support payments, unless the court order says something different.

If your order is made under the *Divorce Act* and does not say that your support payments continue after the payor's death, or if you do not know what type of order you have, you should consult a lawyer.

The Family Responsibility Office (FRO) cannot enforce a support order against the estate of a payor after FRO has been notified of the payor's death.

Q ***When my wife died, I received a death benefit payment from her life insurance company. I used the money to pay for funeral expenses. Now that I have had a chance to figure things out, I would like to divide the family property using the rules that apply to the sharing of family property on separation. Is it too late?***

A No. You can still use the rules that apply on separation to divide the family property. You must subtract the amount of the insurance payment from the equalizing payment you are to receive from your spouse's estate, unless she specified, in writing, that you can receive the insurance proceeds and the equalizing payment. You can ask the estate to reimburse you for the funeral costs.

III. DOMESTIC VIOLENCE

Domestic violence is not tolerated in Ontario. All Ontarians have the right to feel safe in their homes and communities. Although both women and men can be victims of domestic violence, the overwhelming majority of this violence involves men abusing women. Violence can have lasting harmful effects on victims and has a tragic impact on children.

Threatening, hitting, kicking, punching, pushing, stalking and harassing another person are crimes. Having sex with a person against that person's will is also a crime. Being married does not change this. A person committing these acts can be arrested, charged, convicted and jailed.

Psychological, emotional and financial abuse should also not be tolerated, although they are not considered to be crimes under the *Criminal Code of Canada.*

If you or your children are experiencing any of these forms of abuse, you are not alone. There is help available for you. If you are being threatened or physically or sexually assaulted, call the police.

If you do not wish to call the police, or you are experiencing other forms of abuse, there are resources in your community to help you. Some of these are listed at the back of this booklet.

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Talk to a lawyer about what you can do to protect yourself and your children. You could also talk to your doctor, people at your community information centre or community health centre. They know about services in your community that can help you and your children. Your doctor can take care of your injuries and make a note of them in your file. These records can be used in court to prove to a judge that you were assaulted.

The Assaulted Women's Helpline is a toll-free crisis telephone service operating province-wide 24 hours a day, seven days a week. Trained counsellors can help you determine your options, provide information about local supports such as shelters and sexual assault centres and help you develop an immediate safety plan. Interpreters in 150 languages are available to respond to callers. Call 1-866-863-0511 or, in the Toronto calling area, 416-863-0511. TTY 1-866-863-7868.

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In addition, you can call the Victim Support Line (VSL) at 1-888-579-2888. Although this is not a crisis line, VSL staff can provide help by locating an appropriate community-based assistance service. Callers can also access recorded information about how the criminal justice system works, from arrest and sentencing to release procedures.

If your spouse abused you and is now in jail serving a provincial sentence, you can call the VSL and register with the Victim Notification System to get information about the abuser's release date.

If your case goes to criminal court, in many communities there is a Victim/Witness Assistance Program office to help you go through the court process. Your community may also have a Domestic Violence Court program. As part of this program, you will receive information and assistance from Victim/Witness Assistance Program staff. In addition, a judge may order an offender to attend a specialized 16-week education and counselling program.

It is important to find out about resources in your community. If you have to leave your home and you have no money and no place to stay, you may be able to get social assistance, subsidized housing, legal aid and free counselling.

Q ***I left the house the other night when my spouse was being abusive. My friend says that because I deserted the children, my spouse will automatically get custody of them if we go to court. Is that true?***

A No. If you leave an abusive spouse, you have the right to ask for custody of your children and for support for them and yourself. You do not lose this right because you are the one who left the house. A judge must look at the best interests of the children when deciding on who should have custody of them. Let the judge know that your spouse was being abusive. The judge must consider whether a person has been violent or abusive towards their spouse or children when deciding about custody and access. However, it is important for you to see a lawyer right away and to deal with custody questions quickly. If your children have been living with your spouse and without you for some time, a judge may not want to change their living situation.

Even if you leave with the children, you should deal with the issue of custody as soon as possible.

Laws for victims of abuse

There are laws to protect you and your children from violence.

Access orders

A judge must consider whether a person has been violent or abusive when considering the person's ability to care for a child. Ontario's child protection laws protect children against physical, sexual and emotional harm. This conduct may also be a crime. If your child is a victim of abuse by the other parent, you can ask the court to deny that parent access or allow access only if it is supervised.

Restraining orders

A person who is a victim of domestic violence can ask the court to make a restraining order. It is a good idea to speak to a lawyer if you are asking for a restraining order. The restraining order can be general – that your spouse has to stay away from you – or it can be specific. It can say that your spouse must not come to your home, to your place of work, to your children's school or to other places where you often go (for example, your place of worship or your parent's home).

The restraining order must be served on your spouse as soon as possible, but you do not have to serve it yourself. It's best to have someone else serve it for you. If that's not possible, court staff will assist you.

If your spouse disobeys the restraining order, you can call the police. The police will want to see the restraining order. Keep it with you at all times. They may also ask you if your spouse knows about the restraining order. If the police believe that your spouse has disobeyed the restraining order, he or she can be arrested.

Exclusive possession of the family home

If you are married, you can ask the court for the right to live in your home and to make your spouse leave. You have an equal right to stay in your home even if the home is in your spouse's name. It is a good idea to speak to a lawyer if you are asking for an order for exclusive possession of the family home.

If you are not married, you may also ask the court to stay in the home you shared when you lived together, as part of a support order for you or your child. The judge can order this even if you do not own the home or if your name is not on the lease.

Before a judge will order your spouse out of the home, the judge will consider if there was violence in the relationship, if there is another suitable place for you to live, if it is in the children's best interests to stay in their home, and your financial position.

If the judge agrees to an exclusive possession order, your spouse must move out and stay out of the house. If he or she tries to come in, you can call the police and he or she can be arrested.

Restraining orders and exclusive possession orders may not be enough to stop a violent person from hurting you. Your spouse is already breaking the law by abusing or harassing you or your children and may be prepared to break other laws by hurting you again.

If you are a woman in this situation, a women's shelter in your community may be the safest place for you to live with your children for a while.

Stop the abuse

If you are physically or emotionally abusing your spouse, you can do something to stop.

You can:

- talk to a counsellor about your violent behaviour;
- find out about groups that help individuals who abuse their spouses;
- call your doctor, a community information centre, a community health centre, the Victim Support Line or a counselling service to get the telephone number of a group in your community;
- talk to an Employee Assistance Program counsellor at your workplace who may be able to help; and
- accept responsibility for what you say and do.

Emergency Checklist for Assaulted Women in Crisis[2]

- When you are being assaulted, call the police. Tell them you are being assaulted.
- When the police arrive they must lay a charge if they believe an assault has taken place.
- Make noise: neighbours may call the police.
- Teach your children to call the police.
- If you can, take the children when you leave.
- Ask if the police can go back to your home with you later to get things that you need.
- Open a bank account in your name and arrange that bank statements are not mailed to you.
- Save as much as you can.
- Set aside money for a taxi and quarters for payphones.
- Plan your emergency exits.
- Keep emergency numbers with you at all times.
- Hide extra clothes, house keys, car keys, money, etc. at a friend's house

If you have to leave in a hurry, try to take:

- Extra car or house keys
- Passports, birth certificates, immigration papers, health card, social insurance number
- Prescriptions and other medicines
- Emergency suitcase already packed, if possible
- Some special toys and comforts for your children

For more detailed safety planning, see:
www.sheltermet.ca/en/women/making-a-safety-plan or
www.projectbluesky.ca/english/generalinfo/safetyplan.html

[2]Guide to Services for Assaulted Women in Ontario, 1998

IV. FINDING MORE INFORMATION ABOUT...

ABORIGINAL ISSUES

Aboriginal Law Handbook published by Carswell. Check your local library or Friendship Centre. To order from Carswell, call toll-free 1-800-387-5164 or visit the website at: www.carswell.com.

CHILD SUPPORT GUIDELINES

Federal Child Support Guidelines: call 1-888-373-2222 or visit the website at: www.canada.justice.gc.ca (choose "Programs and Initiatives" and "Child Support").

Provincial Child Support Guidelines: you can get an information kit at your local family court or visit the Ministry of the Attorney General website at: www.attorneygeneral.jus.gov.on.ca (choose "Family Justice" and "Child Support Guidelines Information").

CHILDREN

For information and/or help for children who may have been abused, your local children's aid society may be able to help you. Look in the white pages of your telephone directory under "Children's Aid Society" or consult the emergency numbers at the front of the telephone directory. **The Ontario Association of Children's Aid Societies'** website at www.oacas.org also provides contact information for all local children's aid societies in Ontario.

Office of the Children's Lawyer: call 416-314-8000 or visit the Ministry of the Attorney General website at: www.attorneygeneral.jus.gov.on.ca (choose "Offices and Agencies" and "Office of the Children's Lawyer").

If a child has been taken outside of Canada without your permission:

Ministry of the Attorney General, Central Authority for Ontario for The Hague Convention on the Civil Aspects of International Child Abduction. Call 416-240-2411.

International Child Abductions: A Manual for Parents. To order, call the Department of Foreign Affairs and International Trade, Consular Affairs at 1-800-387-3124 or 1-800-267-6788, or visit the website at: www.voyage.gc.ca (choose "Publications" and "Children's Issues").

"our missing children" program c/o National Missing Children Services: In Ontario call toll-free 1-877-318-3576 or fax: 613-993-5430. For more information, including links to other helpful sites, visit the web-site at www.ourmissingchildren.gc.ca.

FAMILY LAW

For the location of the family court in your community, look in the blue pages of your telephone directory under "Courts" in the "Index-Government Listings". Visit the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca (choose "Court Addresses").

For information on the **steps in family cases** and instructions on **how to fill out the forms**, visit the Ministry of the Attorney General website at: www.attorneygeneral.jus.gov.on.ca (choose "Family Justice" and under "Online Publications" select the Guide to Procedure that is appropriate to your case).

Family Law Information Centres: For details about services provided, contact your local family court or visit the Ministry of the Attorney General website at: www.attorneygeneral.jus.gov.on.ca (choose "Family Justice" and "Family Court Services").

Parent Information Sessions are offered through the Family Court of the Superior Court of Justice and at family courts in Toronto. These sessions address the impact of separation and divorce on children and

are free of charge. For more locations and information visit the Ministry of the Attorney General website at: www.attorneygeneral.jus.gov.on.ca (choose "Family Justice" and "Family Court Services").

Separate Ways video on separation and divorce is available through family courts and public libraries.

Moving Forward video follows one couple on their journey towards resolving their family law dispute, as well as parenting issues, and describes options for resolution such as the case conference and mediation. The video is available through family courts and public libraries.

Where Do I Stand: A Child's Guide to Separation and Divorce is available in all family courts and at Publications Ontario. Visit the Ministry of the Attorney General website at: www.attorneygeneral.jus.gov.on.ca (choose "Family Justice" and "Online Publications").

For pamphlets on family law and other legal issues contact:

Community Legal Education Ontario
119 Spadina Avenue
Suite 600
Toronto ON M5V 2L1
Tel.: 416-408-4420
Fax: 416-408-4424
Website: www.cleo.on.ca
(e-mail: cleo@cleo.on.ca)

For information on divorce law contact:

Department of Justice Canada
284 Wellington Street
Ottawa ON K1A 0H8
Tel.: 1-888-373-2222
Website: www.canada.justice.gc.ca

In January 2005, a draft proposal for advisory spousal support guidelines was released and posted on the federal government website. For more information, go to: www.justice.gc.ca/en/dept/pub/spousal/index.html.

For a list of publications on family law, violence against women and children, and other topics, contact:

National Association of Women and the Law
1066 Somerset Street West
Suite 303
Ottawa ON K1Y 4T3
Tel.: 613-241-7570
Fax: 613-241-4657
Website: www.nawl.ca
(e-mail info@nawl.ca)

FAMILY RESPONSIBILITY OFFICE

For information, write to the Family Responsibility Office (FRO) at:

Family Responsibility Office
P.O. Box 220
Downsview ON M3M 3A3
Fax: 416-240-2401

For general information about FRO and access to the forms used by FRO, visit the FRO website at: www.theFRO.ca.

The Confirmation of Assignment form (English form number 006-3006, French form number 006-3007) is available at: www.forms.ssb.gov.on.ca.

To speak to an agent, call:

Tel.: 416-326-1817 (Toronto and area)
Toll-free: 1-800-267-4330
TTY Toronto and area: 416-240-2414
TTY Toll-free: 1-866-545-0083

To make a payment to FRO, send it to:

The Director, Family Responsibility Office
P.O. Box 2204, Station P
Toronto ON M5S 3E9

Important: Remember to print your first and last name, along with the FRO case number on the front of the cheque or money order.

For the 24-hour automated telephone line, where you can get information on recent transactions on your case and answers to general questions about FRO, call:

Tel.: 416-326-1818 (Toronto and area)
Toll-free: 1-800-267-7263

To serve the FRO Legal Department with court documents, send them to:

Legal Services
Family Responsibility Office
1201 Wilson Avenue
Bldg B, 5th Floor
Downsview ON M3M 1J8
Or by fax: 416-240-2402

For information about interjurisdictional support orders, where one person lives outside Ontario contact:

ISO Unit
Family Responsibility Office
PO Box 640
Downsview ON M3M 3A3
Tel.: 416-240-2410 (Toronto and area)
Toll-free: 1-800-463-3533
TTY Toronto and area: 416-240-2414
TTY Toll-free: 1-866-545-0083
ISO Unit Fax: 416-240-2405

All interjurisdictional support order forms are available at the FRO website: www.theFRO.ca.

FINDING A LAWYER

To obtain more information on the services provided by the Law Society of Upper Canada (LSUC), visit the website at: www.lsuc.on.ca

Lawyer Referral Service will provide you with the name of a lawyer who practices in the area of family law in a location near you. That lawyer will provide a half-hour consultation free of charge. The telephone number for this service is 1-900-565-4577. A fixed charge of $6.00 to use this service will appear on your telephone bill.

LSUC will review your **complaint about how a lawyer handled your case**:
Tel.: 416-947-3310 (Toronto and area)
Toll-free: 1-800-268-7568
Website: www.lsuc.on.ca (choose "For the Public" and "Complaints")

Information on how to **dispute a lawyer's charges** (fees): visit the LSUC website at: www.lsuc.on.ca (choose "For the Public", "Complaints" and "Your Lawyer's Bill – Too High?").

Legal Aid: Please contact the legal aid office in your community to see if it can help you. For contact information, refer to the white pages of your telephone directory under "Legal Aid" or visit the website at: www.legalaid.on.ca.

MEDIATION

For more information on family mediation and finding a family mediator, contact:

Ontario Association for Family Mediation
528 Victoria Street North
Kitchener ON N2H 5G1
Tel.: 1-800-989-3025
Fax: 519-585-0504
Website: www.oafm.on.ca
(email oafm@oafm.on.ca)

Family mediation services are available at the Family Court of the Superior Court of Justice. For more information, including the locations o the Family Courts, visit the Ministry of the Attorney General website at: www.attorneygeneral.jus.gov.on.ca (choose "Family Justice" and "Family Court Services").

SUPERVISED ACCESS

For information on the **Supervised Access Program** of the Ministry of the Attorney General, contact your local family court or visit the Ministry's website at www.attorneygeneral.jus.gov.on.ca (choose "Family Justice" and "Supervised Access").

DOMESTIC VIOLENCE

Assaulted Women's Helpline: This is a toll-free crisis telephone service operating province-wide 24 hours a day, seven days a week. Trained counsellors can help you determine your options, provide information about local supports such as shelters and sexual assault centers and help you develop an immediate safety plan. Interpreters in 150 languages are available to respond to callers. Call 1-866-863-0511 or, in the Toronto calling area, 416-863-0511. TTY 1-866-863-7868.

French-Language Crisis Line: A toll-free crisis telephone service for Francophone women experiencing violence. Call 1-877-679-2229 (24 hours a day, 7 days a week).

Shelternet: This website provides information about shelters for abused women across Canada. The website also provides general information and helpful resources for women experiencing violence. It has a separate interactive section for children and youth. The website is produced in 10 languages (English, French, Spanish, Portuguese, Polish, Chinese, Vietnamese, Arabic, Farsi and Punjabi). Visit the website at: www.shelternet.ca.

Education Wife Assault provides information, including publications. Contact:

215 Spadina Avenue
Suite 220
Toronto ON M5T 2C7
Tel.: 416-968-3422
TTY: 416-968-7335
Fax: 416-968-2026
Website: www.womanabuseprevention.com
(email: info@womanabuseprevention.com)

Do You Know a Woman Who is Being Abused? A Legal Rights Handbook, Community Legal Education Ontario (CLEO) 1998. Order copies by calling 416-408-4420 or visit the website at: www.cleonet.ca.

Stalking publications, Metropolitan Action Committee on Violence Against Women and Children (METRAC). Order copies by calling 416-392-3135 or visit the website at www.metrac.org.

VICTIM SERVICES

For information on victim services provided by the Ministry of the Attorney General, visit the website at: www.attorneygeneral.jus.gov.on.ca (choose "Victims and Witnesses").

The Victim Support Line: The Victim Support Line is a province-wide, toll-free information line that provides a range of services to victims of crime in English and French.

Tel.: 416-314-2447 (Toronto and area)
Toll-free: 1-888-579-2888

Telephone numbers, addresses and websites were in effect at the time of printing and may change.

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